

90-179 ①

No. _____

Supreme Court, U.S.
FILED

JUL 26 1990

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

INDEPENDENCE FEDERAL SAVINGS BANK,

Petitioner,

VS.

JAMES B. HUNTLEY,

Respondent.

PETITION FOR A WRIT CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS

JAMES W. COBB
Counsel for Petitioner
1004 Sixth Street, N.W.
Washington, D.C. 20001
(202) 387-1100
Counsel for Petitioner

QUESTIONS PRESENTED

Whether as a matter of law in Case 9500-86 and Case No. 88-1642, the Petitioner, a federally insured savings bank provided proper statutory notice of proposed foreclosure under the Code of Laws for the District of Columbia, Title 45, section 715 (b) and otherwise satisfied the due process requirements of notice and opportunity to be heard as required by the Fourteenth Amendment of the Constitution of the United States, as they relate to borrowers and federally insured banks; when:

(1) the Superior Court in the Case No. 9500-86 of the District of Columbia directed a verdict for plaintiff on liability in Respondents claim, for wrongful foreclosure and wrongful eviction on the grounds that the Bank had failed to give proper statutory notice of proposed foreclosures;

(2) the same District of Columbia court in Case No. 9500-86 concluded that other undisputed facts were inadequate to ever satisfy the due process requirements of notice and opportunity to be heard under the applicable statute and constitutional provisions, and directed verdict at the close of the evidence;

(3) the District of Columbia Court of Appeals affirmed this decision per curiam on April 30, 1990, (appendix K); and

(4) the same District of Columbia Court of Appeals denied the Petition for Rehearing or Hearing En Banc on June 11, 1990 (appendix O).



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IN THE
Supreme Court of the United States
OCTOBER TERM 1990

INDEPENDENCE FEDERAL SAVINGS BANK,

Petitioner,

VS.

JAMES B. HUNTLEY,

Respondent.

**PETITION FOR A WRIT CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS**

JURISDICTION

The United States Supreme Court has jurisdiction to review Case No. 88-1642 by writ of Certiorari pursuant to 28 U.S.C. Section 1257 (3).

On April 30, 1990, in Case 88-1642 the District of Columbia Court of Appeals affirmed the decision of the Superior Court of the District of Columbia in favor of the Respondent in Case No. 9500-86.

On June 11, 1990, the District of Columbia Court of Appeals denied the Petition for Rehearing or Hearing En Banc in Case No. 88-1642.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment of the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

D.C. Code, Title 45, Section 715:

Application to Court to fix terms and determine Notice of Sale; notice under power of sale provision:

“(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgement or discretion of the mortgagee or trustee, any person interested in such sale may apply to the Court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust, mortgage or security instrument at his last known address, with a copy of said notice being sent to the Mayor of the District of Columbia, or his designated agent, at least 30 days in advance of the date of the said sale. Said notice shall be in such a format and contain such information as the Council of the District of Columbia shall by regulation prescribe. The 30-day period shall commence to run on the date of receipt of such notice by the Mayor. The Mayor or his agent shall give written acknowledgment to the holder of the said note, or its agent, on the day that he receives such notice, that such notice has been received, indicating therein the date of receipt of such notice. The

notice required by this subsection in regard to said mortgages and deeds of trust shall be in addition to the notice described by subsection (a) of this section."

28 U.S.C. Section 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question in the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question of a statute of any state on the ground of its being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

The facts in the Case No. 88-1642 are as follows:

On November 17, 1986, Respondent brought suit against the Petitioner for wrongful foreclosure and wrongful eviction. After preparation trial was duly held as scheduled on December 15, 1988, with (1) submitted exhibits as to the mailing of certified letters, return receipt requested to the Respondent, (2) the testimony of the Respondent that he had in fact known of the foreclosure at least 16 days before the sale, (3) could not recall discussions of the sale with the bank prior to the sale, but was present at the sale and (4) testimony by the auctioneer who conducted the sale that they had satisfied the requirements of the Code of Laws for the District of Columbia. At the close of the evidence the trial court, over Petitioner's objections, which included the raised federal questions, directed a verdict for plaintiff on liability as to both counts on the ground that the Bank had failed to give statutory notice of proposed foreclosure.

On December 20, 1988, the jury returned a verdict on damages, awarding plaintiff \$30,000 for wrongful foreclosure and \$500 for loss of personal property during the wrongful eviction (appendix E).

On December 30, 1988 Petitioner filed their Notice of Appeal (appendix F).

On March 10, 1989, a settlement conference was held as scheduled pursuant to the sua sponte order of the Court, without success (appendix G).

The Petitioner filed their initial brief in Case No. 88-1642 on June 14, 1989, raising the Federal questions (appendix H).

On September 22, 1989, the Clerk of the Court of Appeals ordered that Respondent's brief be filed within 10 days or the appeal would be scheduled for consideration on the record and brief of appellant only (appendix I).

Respondent's brief was finally filed on October 2, 1989 (appendix J).

Petitioner raised federal questions:

(a) In Case No. 9500-86 Petitioner raised a federal question in the Superior Court for the District of Columbia when the Court directed a verdict for Respondent.

(b) Petitioner raised the federal question in Case No. 88-1642 in their brief (appendix F).

(c) The Petition for Rehearing or Hearing En Banc, with exhibits (appendix L) and the request to the Clerk of Appeals Corporation Counsel for the District of Columbia and the Attorney General of the United States pursuant to Rule 53, (appendix M, N) again raised the same federal questions.

REASONS FOR GRANTING THE WRIT

This case, 88-1642, presents to this Honorable Court the opportunity to resolve questions regarding notice and satisfaction of the requirements of the Code of Laws for the District of Columbia and the Due Process Clause of the Constitution of the United States, as they relate to foreclosure:

First, whether the duly mailed certified letter (appendix L) satisfied the statutory requirements of the Code of Laws for the District of Columbia, Title 45 section 715 (b).

Second, whether a Directed verdict at the close of evidence was mandated when Respondent, a defaulting

mortgagor, (1) did not, without attested good cause or reason, receipt the certified notice of foreclosure; (2) admitted actual notice of the sale 16 days prior to the sale; (3) could not deny that he had discussions with the Bank prior to the sale; (4) was present at the sale; (5) uncontroverted testimony of the nationally known and respected auctioneer who conducted the sale, that the sale was held in compliance with the Code of Laws for the District of Columbia.

These issues seriously affect the legal process as they affect federally insured banks, auctioneers and legal advisors in the United States in general, and the District of Columbia, in particular, where the notice requirements are similar to the subject statute of this litigation.

It is submitted that this interpretation seriously affects the titles to real estate which have resulted from a foreclosure process, in the past or presently, either directly or indirectly, when it is determined that a borrower for **unexplained** reasons has not received the certified notice, although properly mailed to his address of record pursuant to statutory regulation, coupled with the other undisputed facts as in this case.

Finally, there may clearly be a vast difference between the responsibilities of contracting parties and those of a government or municipality in regard to the requirements of notice, as it would apply to tax sales, assessments, condemnation, etc. Obviously, the public interests may demand some different considerations. It should be made clear, however, that **unexplained** reasons for not receiving a duly mailed certified notice, return receipt requested, and Respondent's subsequent conduct in the absence of some handicap, should never be rewarded.

This Court established the major requirement in the case of *Convey v. Town of Somers* 351 U.S. 141, 146 (1955), that "an elementary and fundamental requirement of Due Process in any proceeding which is to accorded finality is notice reasonably **calculated** under all circumstances to apprise the interested parties of pendency of action and afford them an opportunity to present their objections." And further, in the case of *Gerald D. Nelson, et al v. The City of New York* 352 U.S. 103, 105 (1956), this court expanded on the satisfaction of the procedural due process requirements in concluding that in the commencement of a foreclosure action requiring notices, ". . . owner should be notified by mailing notice to his **last known address** . . ." (emphasis supplied).

Title 45 section 715, requiring the mailing to the owner at his **last known address** may or may not be an exclusive requirement that would protect federally insured institutions from the evasive tactics of a property owner who would avoid receipt of a certified notice, yet admit that he was aware of the proposed sale and allow a trial court to ignore the uncontroverted testimony of a nationally known and respected auctioneer, who was the agent of the Bank, that the Code of Laws for the District of Columbia had been satisfied.

Contrary to the cases cited in the opinion of the Court of Appeals, this case does not involve an owner that the Bank should have known where to reach the Respondent personally, nor is the Respondent incompetent, unprotected, etc., moreover this case does not involve a local government.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court will grant this petition for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals and to grant whatever relief that may be just and proper.

Respectfully submitted,

James W. Cobb

Date: July 26, 1990

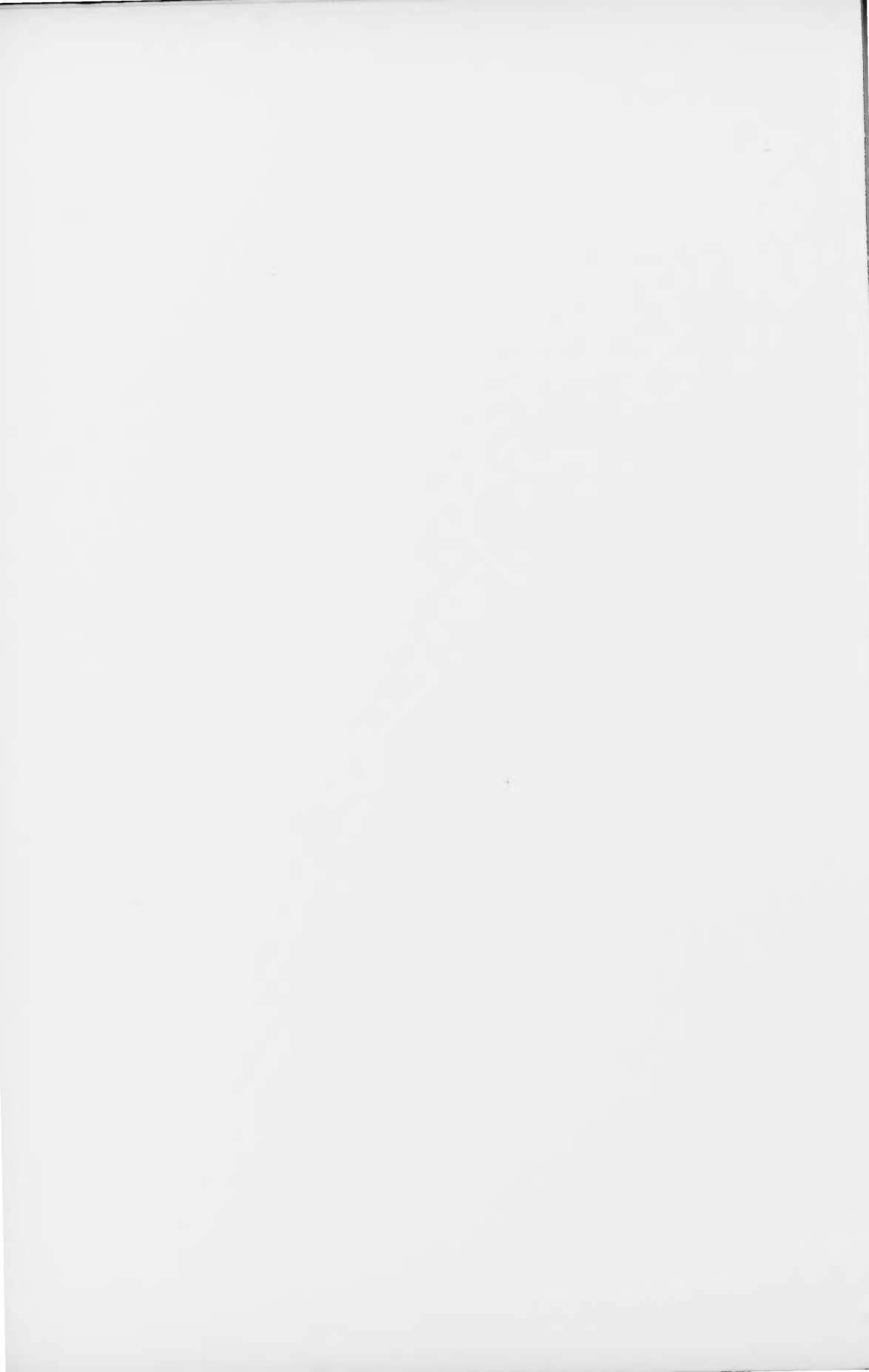
CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of this Court and that pursuant to Rules 28.3 and 28.5(b) of the Rules of the Supreme Court, I this day served three (3) copies of the foregoing Petition for Writ of Certiorari to Bernard A. Gray, Esquire. Such service was accomplished by mailing the copies first class postage prepaid to counsel at the following address:

Bernard A. Gray, Esquire
2009 18th Street, S.E.
Washington, D.C. 20020

By _____
James W. Cobb

Date: July 26, 1990



APPENDIX

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**Superior Court of the
District of Columbia
Civil Division**

JAMES B. HUNTLEY :
4395 Colorado Avenue N.W. :
Wash., DC 20011 :
Plaintiff :

vs. :

INDEPENDENCE FEDERAL :
SAVINGS BANK :
1229 Connecticut Avenue N.W. :
Wash., DC 20036 :
Defendant :

**COMPLAINT FOR FAILURE TO GIVE PROPER
NOTICE AND FOR AN ACCOUNTING AND
DAMAGES**

Comes now the plaintiff, James B. Huntley, pro se, in the above captioned cause and moves this Court as follows:

1. Jurisdiction is vested in this Court pursuant to Section 11-192 of the District of Columbia Code 1983 Edition.
2. That Independence Federal Savings Bank failed to give proper notice of the foreclosure.
3. That plaintiff did borrow money from Independence Federal Savings Bank with 5519 Illinois Avenue N.W. and 600 "T" Street as security.
4. Thereafter plaintiff made payments periodically to which a substantial amount was misapplied as penalties and interest.

5. Plaintiff suffered substantial damages.

WHEREFORE, the premises considered, plaintiff prays this Court:

1. That defendant be required to give a full and accurate accounting as to the application of all the plaintiff's funds.

2. That plaintiff be awarded judgment against defendant in the amount of Two Hundred Thousand Dollars (\$200,000.00).

3. And for such other and further relief that the Court may deem meet and proper.

James B. Huntley
4395 Colorado Avenue
N.W.
Washington, D.C. 20011
829-3119

PLAINTIFF DEMANDS A JURY TRIAL

Plaintiff deposes and says that he has read the foregoing complaint by him subscribed that he knows the contents thereof and that the matters and things therein set forth he verily believes to be true.

James B. Huntley

District of Columbia: ss:

Subscribed and sworn to before me this 17th day of November 1986.

James B. Huntley Affiant

Notary Public

My commission expires:

**Superior Court of the
District of Columbia
Civil Division**

JAMES B. HUNTLEY :
4395 Colorado Ave., N.W. :
Washington, D.C. 20011 :
Plaintiff :

vs. :

Civil Action No. 9500-86

INDEPENDENCE FEDERAL :
SAVINGS BANK :
1229 Connecticut Ave., N.W. :
Washington, D.C. 20036 :
Defendant :

ANSWER OF DEFENDANT

Comes now the Defendant, Independence Federal Savings Bank, by and through its attorney, James W. Cobb, and for answer to the complaint filed herein represents as follows:

1. That the complaint fails to state a cause of action upon which relief may be granted.

2. That the defendant did loan monies to the plaintiff secured by real estate with improvements known as 5519 Illinois Avenue, N.W. and 600 "T" Street, N.W., both in the District of Columbia.

3. The defendant denies the allegation of paragraphs two (2), four (4) and five (5) of plaintiff's complaint.

By way of further answering the complaint the defendant states that the plaintiff failed to make payments as required in the Deed of Trust resulting in foreclosure as required under Code of Laws for the District of Columbia.

2. That there has been no misapplication of funds to principal or interest.

3. The defendant denies each and every material allegations of the complaint.

WHEREFORE, the premises considered, the defendant prays that the complaint be dismissed with prejudice and with costs and attorney fees assessed against the plaintiff.

2. For such other and further relief as to this Honorable Court may seem just and proper.

JAMES W. COBB (2253)
Attorney for Defendant
1004 Sixth St., N.W.
Washington, D.C. 20001
387-1100

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer was mailed, postage prepaid, to James B. Huntley, 4395 Colorado Ave., N.W., Wash., D.C. 20011, this 2nd day of December, 1986.

JAMES W. COBB,
ESQUIRE

**Superior Court of the
District of Columbia
Civil Division**

JAMES B. HUNTLEY
Plaintiff

vs.

INDEPENDENCE FEDERAL
SAVINGS BANK

LIPSCOMB REALTY
CORPORATION

DONALD LIPSCOMB

ALBERTA WILLIAMS

MYUNG KIM

Defendants

Civil Action No. 9500-86

**AMENDED SPECIFIC COMPLAINT TO INCLUDE
FRAUD, CONSPIRACY AND TO ADD NEW
DEFENDANTS**

Comes now plaintiff, James B. Huntley, pro se, in the above-captioned case states as follows:

1. That on or about January 8, 1987 Independent Federal Savings Bank did conspire by fraudulent means with Lipscomb Realty Corporation, Donald Lipscomb, Alberta Williams and others to illegally take possession of the real property 5519 Illinois Ave. N.W., Washington, D.C. by changing the locks on the doors to deny plaintiff access.

2. That on or about September 1, 1987 Alberta Williams proceeded to make physical changes in the above property after that illegal seizure which caused plaintiff grievous harm and damages without the statutory 30 day Notice To Quit.

3. That plaintiff's personal property was stolen and removed from the premises.

4. That on or about January 8, 1987 Independence Federal Savings Bank did conspire and by fraudulent means with Lipscomb Realty Corporation, Donald Lipscomb, Myung Kim and others to illegally take possession of the real property 600 Tea Street N.W., Washington, D.C. by changing the lock on the door and denying plaintiff access without the statutory 30 day Notice To Quit.

5. That on or about July 10, 1987 Myung Kim and others proceeded to illegally remove plaintiff's property and records from the property 600 Tea Street N.W. all of which caused plaintiff much anguish and damages.

WHEREFORE, in consideration of the above-mentioned specifics, as well as the contents of the original complaint and amended complaint, already a matter of record the plaintiff prays this Court,

1. That the plaintiff be awarded judgment against the defendants herein in the sum of One Hundred Thousand Dollars (\$100,000.00) from each of the above named defendants.

2. That plaintiff be awarded punitive damages in the amount of Three Hundred Thousand Dollars (\$300,000.00) from the above defendants.

3. And for such other and further relief that the Court may deem meet and just.

Respectfully submitted.

James B. Huntley, pro se
4395 Colorado Avenue
N.W.
Washington, D.C. 20011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, a copy of the foregoing was mailed, postage prepaid, to James W. Cobb, Esq., 1004-6th Street N.W., Wash., D.C. 20001. Lipscomb Realty Corporation, Donald Lipscomb, 4015 Georgia Avenue N.W., Wash., D.C. 20011. Alberta Williams, 5519 Illinois Ave. N.W., Washington, D.C. 20011 and Myung Kim, 600 Tea Street N.W., Wash., D.C. 20001 Nov. 27, 1987.

James B. Huntley

POINTS AND AUTHORITIES

Mendez v. Johnson, 389-A.2d 781 (1978).
Northeast Auto Wreckers, Inc. v Sanford App D.C. A.2d 292 (1945).
Thompson v Mazo App. A.2d 122 (1968). D.C. Code 1981 Edition (45-1404).
Title 18, 1982 Ed. U.S.C., Chapter 96, Sect 1964 (c) and Chapter 63, Section 1341 and Section 1343.
Rules of the Court.

James B. Huntley

**Superior Court of the
District of Columbia
Civil Division**

Washington, D.C. 20001

JAMES B. HUNTLEY :
Plaintiff :

CA No. 9500-86

INDEPENDENCE FEDERAL :
SAVINGS BANK :

LIPSCOMB REALTY CORP. :

DONALD LIPSCOMB :

ALBERTA WILLIAMS :

MYUNG KIM :
Defendants :

ORDER

Upon consideration of the motion To Amend the Amended Complaint filed by James B. Huntley and after hearing argument on behalf of all parties concerned, it is, by the Court, this _____ day of _____, 19____,

ORDERED:

(1) That the motion be, and it is hereby, GRANTED

Copies to:

James W. Cobb, Esq.
1004-6th Street N.W.
Washington, D.C. 20001
Lipscomb Realty Corp. &
Donald Lipscomb
4015 Georgia Ave. N.W.
Washington, D.C. 20011

Alberta Williams
5519 Illinois Avenue N.W.
Washington, D.C. 20011
Myung Kim
600 Tea Street N.W.
Washington, D.C. 20001

JUDGE

**Superior Court of the
District of Columbia
Civil Division**

JAMES B. HUNTLEY :
Plaintiff :

vs. :

Civil Action No. 9500-86

INDEPENDENCE FEDERAL :
SAVINGS BANK :
Defendant :

ANSWER TO AMENDED SPECIFIC COMPLAINT

Comes now the Defendant, Independence Federal Savings Bank, by and through its attorney, James W. Cobb, and in Answer to the Amended Specific Complaint represents as follows:

1. That the amended specific complaint fails to state a cause of action upon which relief may be granted.
2. That the defendant denies the allegations of paragraph one (1), two (2), three (3), four (4), and five (5) of the amended specific complaint.

By way of further answering the amended specific complaint, the defendant restates their answer to the original complaint:

1. That the plaintiff failed to make payments as required in the Deed of Trust securing the subject properties resulting in foreclosure as required under the Code of Laws for the District of Columbia.
2. That there has been no misapplication of funds to the mortgage account of either principal or interest.

WHEREFORE, the premises considered, the defendant prays that the amended specific complaint be dismissed with prejudice with costs and attorney fees assessed against the plaintiff and for such other and further relief as to this Honorable Court may seem just and proper.

Respectfully submitted,

JAMES W. COBB (2253)
Attorney for Defendant
1004 Sixth Street N.W.
Washington, D.C. 20001
(202) 387-1100

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer to the Amended Specific Complaint was mailed, postage prepaid, to James B. Huntley, 4395 Colorado Avenue N.W., Washington, D.C. 20011 this 15th day of December, 1987.

JAMES W. COBB, ESQ.

Superior Court of the
District of Columbia
Civil Division

JAMES B. HUNTLEY
Plaintiff

:
:

vs.

:

Civil Action No. 9500-86

INDEPENDENCE FEDERAL
SAVINGS BANK
Defendant

:
:

JUDGMENT

This action came on for trial before the Court. Honorable Ronald P. Wertheim, Superior Court Judge, presiding, and the issues having been duly tried and a decision having been duly rendered, it is this 20th day of December 1988.

ORDERED that the plaintiff *James B. Huntley* recover of the defendant *Independence Federal Savings Bank* the sum of \$30,000.00 for wrongful foreclosure and the sum of \$500.00 for wrongful eviction with interest thereon from *December 20, 1988* at the rate of 8 percent as provided by law, and costs of action.

F. B. BEANE, JR.

Clerk of Court

By: Valerie Canady

Deputy Clerk

Superior Court of the District of Columbia

Notice of Appeal

James B. Huntley vs. Independence Federal Savings Bank, et al.

Docket Number 9500-86.

Notice is hereby given that Independence Federal Savings Bank appeals to the District of Columbia Court of Appeals from the judgment of the Civil Division of this Court entered on the 22nd day of December, 1987, by the Honorable Ronald P. Wertheim.

Description of judgment or order: \$30,000 for wrongful foreclosure and \$500.00 for wrongful eviction.

Issues to be presented by appellant on appeal: Instructions to Jury, Admission of Evidence, Failure to Grant Motions for Directed Verdicts.

Jury Trial.

Defendant's address: 1229 Connecticut Avenue, N.W.

State the dates and portions on the transcript needed on appeal. (Unless specifically requested here, no portion(s) of the transcript will be provided): Paid.

Portions of transcript requested: December 18 through December 22, 1988. Court Reporter: K. Jackson, 870-1064.

Names and addresses of parties or attorneys to be served: James W. Cobb, 1004 Sixth St., N.W., Washington, D.C. 20001; Bernard A. Gray, Sr., (955013) 2009 18th Street, S.E., Washington, D.C.

Notice of Appeal filed by Defendant.

James W. Cobb, Attorney for Appellant, 1004 Sixth St., N.W., Washington, D.C. 20001; Unified Bar No. 2253; Telephone No. 387-1100.

District of Columbia Court of Appeals

No. 88-1642 :
 JAMES B. HUNTLEY :
 Appellant :

vs. :

No. CA9500-86

INDEPENDENCE FEDERAL :
 SAVINGS BANK :
 Appellee :

ORDER

It is ORDERED, *sua sponte*, that this appeal is hereby scheduled for a settlement conference on Friday, March 10, 1989, at 10:00 a.m., before a judge of this court. Parties are to be present at the District of Columbia Court of Appeals hearing room, located at 500 Indiana Avenue, N.W., on the sixth floor, no later than 9:55 a.m.

BY THE COURT:

JUDITH W. ROGERS,
 Chief Judge

Copies to:
 James W. Cobb, Esquire
 1004 Sixth Street, N.W.
 Washington, D.C. 20001

Bernard A. Gray, Sr., Esquire
 2009 18th Street, S.E.
 Washington, D.C. 20020

meh

**District of Columbia
Court of Appeals**

Independence Federal Savings Bank
Appellant,

v.

James B. Huntley
Appellee

Appeal No. 88-01642

JAMES W. COBB, ESQUIRE
Attorney Appellant
1004 Sixth Street N.W.
Washington, D.C. 20001
(202) 387-1100

**CERTIFICATE REQUIRED BY RULE 28(a)(1) OF THE
RULES OF THE DISTRICT OF COLUMBIA COURT
OF APPEALS**

The undersigned counsel of record for Independence Federal Savings Bank, certifies the following list of parties:

JAMES W. COBB, ESQUIRE
Counsel of Record for Independence
Federal Savings Bank
1004 Sixth Street N.W.
Washington, D.C. 20001

BERNARD A. GRAY, ESQUIRE
Counsel of Record for James B. Huntley
2009-18th Street S.E.
Washington, D.C. 20020

Respectfully submitted,

JAMES W. COBB, ESQ.
Attorney for Appellant
1004 Sixth St. N.W.
Washington, D.C. 20001
(202) 387-1100

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

The two fundamental issues presented in this case are the legal sufficiency of the notice received by the Borrower, upon default in his mortgage payments, and subsequent foreclosure.

The questions of evidence offered by the Borrower as to alleged proof of damages for properties claimed to have been lost as the result of the foreclosure action.

STATEMENT OF THE CASE

The Bank, Independence Federal Savings Bank, loaned monies to the Borrower, James B. Huntley, secured by real properties located in the District of Columbia, with improvements thereon known as Lot 837 in Square 441 improved by premises 600 "T" Street, N.W. and Lot 75 in Square 2992 improved by premises 5519 Illinois Avenue, N.W., respectively. That pursuant to the Code of Laws for the District of Columbia, the services of a real estate auctioneer, Thomas J. Owen & Sons, with an office located in the District of Columbia at 4400 Jenifer Street, N.W., conducted a sale of the subject properties. Pursuant to notice and in accord with the Code of Laws for the District of Columbia, a sale was held as scheduled on November 26, 1986. By virtue of its Bid, title was placed in the name of The Bank, to protect its lien interest.

Subsequently, The Bank acting upon information and belief, that the properties had been abandoned proceeded with a sale of the subject properties.

In November, 1986, Borrower filed suit against The Bank and others alleging wrongful foreclosure and eviction and seizure of his real and personal property. Following extensive discovery and the matters proceeding to a trial by jury before the Superior Court and on December 22, 1988, a judgment was entered in favor of the Borrower for \$500.00, for unlawful eviction and \$30,000.00, for wrongful foreclosure.

ARGUMENT

THE REQUIREMENT OF NOTICE AS PRESCRIBED BY THE CODE OF LAWS FOR THE DISTRICT OF COLUMBIA AND THE DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE UNITED STATES HAVE BEEN SATISFIED.

It is clear from the evidence that an appropriate notice of foreclosure was sent by the office of Thomas J. Owen, Auctioneers. During the trial, this witness, Jody Krieger, testified that as manager and auctioneer for the real estate auction department of the firm of Thomas J. Owen and Sons, Auctioneers, that she conducted a foreclosure on the subject properties on November 26, 1986 (Tr. pgs. 118 thru 120), and the fact that the auction was held pursuant to the Code of Laws for the District of Columbia (Exh. A&B). This testimony and the evidence was uncontroverted. The Borrower during his deposition and during the testimony at the trial eliminated any possible violations of the notice requirements under the statute by his testimony that he did, in fact, know of his deficiencies and the date of the sale.

At page 36 of the Borrower's deposition on March 20, 1988, he clearly stated that he knew of the foreclosures on both pieces of property and identified the newspaper advertisement regarding the sale (Dep. pg. 36, Exh. 1), but could not recall ever talking to the Bank (Dep. pg. 37, 38).

Although the exhibits and the uncontroverted testimony of the auctioneer confirm that the notice requirements of the Code of Laws for the District of Columbia, the testimony of the Borrower provides additional support to satisfy the constitutional and technical requirements (Tr. p. 24).

The requirement under Article Fourteen of the Constitution of the United States, has clearly been satisfied that

"No state shall make or enforce any law . . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws."

D.C. Code, § 45-15 provides as follows:

"(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust, mortgage or security instrument at his last known address, with a copy of said notice being sent to the Mayor of the District of Columbia, or his designated agent, at least 30 days in advance of the date of said sale. Said notice shall be in such format and contain such information as the Council of the District of Columbia shall be regulation prescribe. . . ."

Although it is fundamentally accepted that where the exact provisions of the regulations relating to notice of foreclosure were complied with that the notice was adequate. *Silver Spring Development Company v. Guertler*, 267 A2d 749. Any concerns have been satisfied by actual notice prior to the sale, possible presence at the sale, and on the eve of trial of this action, December, 1988.

Any possible defect in this foreclosure proceeding was cured by the knowledge of the borrowers of the pending sale and his presence. (Tr. pgs. 24, 25, 26)

II.

PROOF OF DAMAGES SHOULD NOT BE THE SUBJECT OF SPECULATION OR ASSUMPTION.

Proof of damages must be the subject of credible and acceptable evidence. It is also fundamental that Borrower, had the burden of proving his damages. *Dairy Farm Leasing v. Hartle*, 395 A2d 1135, and that actual or compensatory damages can not be presumed, but must be proved. Recovery is limited to evidence established by appropriate and legally sufficient evidence. *McDougal v. Hunt*, 71 A2d 857.

Under any circumstances the value of personal property should be confined to market value at time of accident, *Royer v. Diehl*, 55 A2d 722, and not a 1988 catalogue from which Borrower testified in an effort to establish value and attempted to avoid his responses during the discovery process.

Certainly, the allusion to assess value alone and other criteria, by a layman, have never been a substitute for proof of any damages.

As outlined under Rule 41(b) of the Superior Court of the District of Columbia motion if there is insufficient credible evidence to sustain each element of the Borrower's claim, or if, despite such credible evidence, a valid defense is evident from plaintiff's own case, judgment for the defendant is justifiable. *Marshall v. District of Columbia*, 391 A2d 1374 (1978). The Court erred in denying cross-examination of the Borrower regarding inconsistent statements made by the Borrower in his testimony as opposed to his deposition and Answers to Interrogatories. The effect of this denial restricted this possible impeachment or credibility process examination. The requirement of the use of closing argument as the sole effort to discredit or impeach his testimony was erroneous. (Tr. p. 114, 37, 38, 39, 40, 41) This ruling precluded evidence relating to the defense of abandonment, among other possible defenses adduced from the record.

The Court also erred in failing to give instruction dealing with abandonment, proof of damages and notice. Abandonment had been defined as a voluntary relinquishment of a known right with no intent to reclaim. *Menzel v. List*, 267 N.Y.S.2d 804, 809. The evidence clearly suggested that there was a voluntary relinquishment of possession of the premises by appellant with the appropriate intention. This is clearly adduced from the testimony of Borrower during his deposition at pages 31 and 32, including that there was no water, no heat, and no light for many months.

The Borrower during his deposition again stated that he could not remember what furnishings were left in the properties (T Street) and that the other property (Illinois Avenue) had been tenant occupied. He was emphatic in his deposition that he could not get, obtain or submit an inventory of the properties in the subject properties even prior to the foreclosure. (Dep. pgs. 28, 29)

Finally, and succinctly stated it is the Bank's position that the Court wrongfully, but clearly stated that the "only issues will be damages. . . ." (Tr. 17)

" . . . There is no longer before the jury any issues of whether or not the Independence Federal Savings Bank wrongfully foreclosed the mortgage. . . ."

CONCLUSION

Upon consideration of the above arguments, the Bank prays that the verdict and judgment be vacated and judgment entered in favor of the appellant/defendants and that the complaint be dismissed with prejudice.

Respectfully submitted,

JAMES W. COBB
Attorney for Appellants/
Defendants
1004 Sixth Street, N.W.
Washington, D.C. 20001
(202) 387-1100

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief for Appellant, was mailed, postage prepaid, to Bernard A. Gray, Esq., 2009 18th Street, S.E., Washington, D.C. 20020, Attorney for Appellee/Plaintiff, this 13th day of June, 1989.

JAMES W. COBB,
ESQUIRE

**NOTICE OF FORECLOSURE SALE OF REAL
PROPERTY OR CONDOMINIUM UNIT**

(Pursuant to Public Law 90-566, approved
October 12, 1968)

TO: (List Name and address of each owner of the real
property encumbered by said deed of trust, mort-
gage, or security instrument.)

Mr. James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

FROM: Independence Federal Savings Bank
PHONE: (202) 628-5500

**YOU ARE HEREBY NOTIFIED THAT IN ORDER TO
SATISFY THE DEBT SECURED BY THE DEED OF
TRUST, MORTGAGE, OR OTHER SECURITY IN-
STRUMENT, THE REAL PROPERTY OR CONDO-
MINIUM UNIT HEREIN DESCRIBED WILL BE
SOLD AT A FORECLOSURE SALE TO BE HELD ON
Thurs., Nov. 20th, 1986, AT THE OFFICE OF THOS. J.
OWEN & SON, INC., 4400 JENIFER ST., N.W., STE.
300, WDC 20015 12:05 P.M. THIS SALE DATE IS SUB-
JECT TO POSTPONEMENT FOR A PERIOD NOT TO
EXCEED THIRTY (30) CALENDAR DAYS FROM
THE ORIGINAL DATE OF FORECLOSURE SALE,
AFTER WHICH THIS NOTICE OF FORECLOSURE
SHALL EXPIRE.**

Security Instrument recorded in the land records of the
District of Columbia at the Recorder of Deeds on Novem-
ber 2, 1984.

Liber: **Folio:** **Instrument No. 40093**

Maker(s) of Note secured by the instrument:

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

Description of Property: Brick Semi Detached Dwelling

Address: 600 T Street, N.W., Washington, D.C. 20001

Lot & Square No: 837/441 or Parcel No:

Holder of the Note:

Independence Federal Savings Bank of Washington
1229 Connecticut Ave., N.W., Washington, D.C. 20036
628-5500

Balance owned on the note: \$39,993.51 plus interest

Minimum balance required to cure default obligation pursuant to D.C. Law 5-82 "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984." \$11,647.21 as of 10/31/86 plus costs and fees.

Person to contact to stop foreclosure sale:

Denise Cooley, Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
(202) 628-5500

I, hereby certify that a Notice of Foreclosure Sale was sent to the present owner(s) of the real property encumbered by said deed of trust, mortgage, or other security instrument described above, by certified mail, return receipt required on October 15, 1986; and I further certify that I understand that Public Law 90-566 prohibits any foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument until after the owner(s) of the real property encumbered by said deed of trust, mortgage, or security instrument has been given written notice of such sale, and the

Recorder of Deeds, D.C. has received a copy of such notice at least 30 days in advance of such sale.

October 15, 1986 /s/

(Date)

(Signature of the Noteholder or
his agent)

I, Helen Joyce Blizzard, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT C.R. Griffin, party/ies to this Notice of Foreclosure Sale bearing date on the 15th day of October, 1986, personally appeared before me and executed the said Notice of Foreclosure Sale and acknowledged the same to be his/her/their act and deed.

Given under my hand and seal this the 15th day of October, 1986.

Notary Public

My commission expires:
(Notarial Seal)

THOS. J. OWEN & SON, INC.
REAL ESTATE AUCTIONEERS
4400 Janney Street, N.W.
Washington, D.C. 20015



TO: THOS. J. OWEN & SON, INC.
4400 Janney Street, N.W.
Washington, D.C. 20015

CERTIFIED MAIL
P 029 828 748

668928
SON

P 029 828 748
RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

To: <i>James B. Smith, Jr.</i>	
Street: <i>1400 Columbia Ave. NW</i>	
City: <i>Washington, D.C.</i>	
State and ZIP Code: <i>DC 20004</i>	
Postage	<i>1.67</i>
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postage on Date <i>2/11</i> <i>600 T. J. Owen, Inc.</i>	

HAROLD BARDONVILLE
RECORDER OF DEEDS
WASHINGTON, D.C.
02182 INS
A 5.00 FGR
6.00 TOTL
6.00 CAID
H. B. Bard
2000 A 10/17/86
0 2140

HAROLD BARDONVILLE
RECORDER OF DEEDS
WASHINGTON, D.C.
43301 INS
A 6.00 PLND
6.00 TOTL
6.00 CAID
1637
B. H. Bard
1982 A 10/17/86
0 2140

**NOTICE OF FORECLOSURE SALE OF REAL
PROPERTY OR CONDOMINIUM UNIT**

(Pursuant to Public Law 90-566, approved
October 12, 1968)

TO: (List Name and address of each owner of the real
property encumbered by said deed of trust, mor-
tage, or security instrument.)

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

FROM: Independence Federal Savings Bank
PHONE: (202) 628 5500

**YOU ARE HEREBY NOTIFIED THAT IN ORDER TO
SATISFY THE DEBT SECURED BY THE DEED OF
TRUST, MORTGAGE, OR OTHER SECURITY IN-
STRUMENT, THE REAL PROPERTY OR CONDO-
MINIUM UNIT HEREIN DESCRIBED WILL BE
SOLD AT A FORECLOSURE SALE TO BE HELD ON
Thursday, Nov. 20, 1986, AT THE OFFICE OF THOS. J.
OWEN & SON, INC. 4400 JENIFER STREET, N.W.
SUITE 300, WASHINGTON, D.C. AT 12:30 P.M. THIS
SALE DATE IS SUBJECT TO POSTPONEMENT FOR
A PERIOD NOT TO EXCEED THIRTY (30) CALEN-
DAR DAYS FROM THE ORIGINAL DATE OF FORE-
CLOSURE SALE, AFTER WHICH THIS NOTICE OF
FORECLOSURE SHALL EXPIRE.**

Security Instrument recorded in the land records of the
District of Columbia at the Recorder of Deeds on Septem-
ber 27, 1984.

Liber:

Folio:

Instrument No. 35295

Maker(s) of Note secured by the instrument:

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

Description of Property: Brick Dwelling

Address: 5519 Illinois Ave., N.W., Washington, D.C. 20011

Lot & Square No: 75/2992 or Parcel No:

Holder of the Note:

Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
628-5500

Balance owed on the note: \$39,993.51 plus interest

Minimum balance required to cure default obligation pursuant to D.C. Law 5-82 "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984." \$11,647.21 as of 10/31/86 plus costs and fees.

Person to contact to stop foreclosure sale:

Denise Cooley, Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
(202) 628-5500

I, hereby certify that a Notice of Foreclosure Sale was sent to the present owner(s) of the real property encumbered by said deed of trust, mortgage, or other security instrument described above, by certified mail, return receipt required on October 15, 1986; and I further certify that I understand that Public Law 90-566 prohibits any foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument until after the owner(s) of the real property encumbered by said deed of trust, mortgage, or security instrument has been given written notice of such sale, and the

Recorder of Deeds, D.C. has received a copy of such notice at least 30 days in advance of such sale.

October 15, 1986

(Date)

/s/

(Signature of the Noteholder or
his agent)

I, Helen Joyce Blizzard, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT C.R. Griffin, party/ies to this Notice of Foreclosure Sale bearing date on the 15th day of October, 1986, personally appeared before me and executed the said Notice of Foreclosure Sale and acknowledged the same to be his/her/their act and deed.

Given under my hand and seal this the 15th day of October, 1986.

Notary Public

My commission expires: 9/30/88

District of Columbia Court of Appeals

No. 88-1642 :
INDEPENDENCE FEDERAL :
SAVINGS BANK :
Appellant :

vs.

CA9500-86

JAMES B. HUNTLEY :
Appellee :

ORDER

It appearing that the brief of appellee was due to be filed on or before July 19, 1989, and it has not yet been filed with this court, it is

ORDERED that the brief of appellee shall be filed within 10 days from the date of this order, or this appeal shall be scheduled for consideration on the record and brief of appellant alone.

FOR THE COURT:

RICHARD B. HOFFMAN
Clerk of the Court

Copies to:
James W. Cobb, Esquire
1004 6th Street, N.W.
Washington, D.C. 20001

Bernard A. Gray, Sr., Esquire
2009 18th Street, S.E.
Washington, D.C. 20020

**District of Columbia
Court of Appeals**

INDEPENDENCE FEDERAL
SAVINGS BANK :
Appellant :

v. :

APPEAL NO. 88-1642

JAMES B. HUNTLEY :
Appellee :

**APPEAL FROM THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

BRIEF OF THE APPELLEE—APPEAL NO. 88-1642

BERNARD A. GRAY, SR.
955013
2009 18th Street, S.E.
Washington, D.C. 20020
(202) 889-6900
COUNSEL FOR THE
APPELLEE

**District of Columbia
Court of Appeals**

INDEPENDENCE FEDERAL
SAVINGS BANK :
Appellant :

vs. :

JAMES B. HUNTLEY :
Appellee :

APPEAL NO. 88-1642

CERTIFICATE OF COUNSEL

Appeal No. 88-1642, *Independence Federal Savings Bank v. James B. Huntley*, certificate required by Rule 28(a)(1) of the General Rules of the District of Columbia Court of Appeals:

The undersigned Counsel of record for James B. Huntley certifies that the following listed parties appeared below: Independence Federal Savings Bank, Defendant (Appellant herein) and James B. Huntley, Plaintiff (Appellee herein).

These representations are made in order that the Judge of this court, *inter alia*, may evaluate possible disqualification or recusal.

Respectfully submitted,

BERNARD A. GRAY,
SR. 955013
2009 18th Street, S.E.
Washington, D.C. 20020
(202) 889-6900
COUNSEL FOR THE
APPELLEE

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STATEMENT OF ISSUES

1. Was the evidence offered by Independence Federal Savings Bank sufficient to present an issue of fact as to liability to the jury?
2. Was there sufficient evidence presented by James B. Huntley for the jury to determine damages without speculation?

PROCEDURAL HISTORY

This case comes before this court from the Superior Court of the District of Columbia after a jury trial. The court entered judgment on behalf of the Plaintiff after a jury verdict awarding the Plaintiff \$30,000.00 for wrongful foreclosure and \$500.00 for loss of personal property during a wrongful eviction.

The Plaintiff owned real estate known as 600 T Street, Northwest and 5519 Illinois Avenue, Northwest, both in Washington, D.C. Because of financial difficulties, the Plaintiff had not paid the Defendant, hereinafter referred to as IFSB. As a result of the Plaintiff's failure to pay as agreed under the mortgage, IFSB foreclosed on the properties. However, the Plaintiff did not receive notice of the foreclosure as required by D.C. Code 45-715, i.e., the Plaintiff did not receive a 30-days notice nor does the evidence show a notice was mailed to the Plaintiff by certified mail, return receipt requested.¹

After foreclosure, IFSB and or its agent, evicted Plaintiff's personal property from both properties and changed the locks without filing a suit for possession in the court. As a result of the eviction, the Plaintiff lost his personal property.

ARGUMENT:

**I. THERE IS NO EVIDENCE IN THE RECORD TO
SUPPORT THE ISSUE OF LIABILITY TO BE
PRESENTED TO THE JURY**

IFSB appears to be saying that even if it did not comply with the statute, the Plaintiff received notice of the foreclosure and thus waived his right to have IFSB comply with the statute.

However, failure to proceed in accordance with the statutory requirements rendered the process procedurally defective and the foreclosure void. *Schalawig v. De-Peyster*, 83 Iowa 232, 49 H.W. 843.

In this case, not only did IFBS fail to show it gave notice by certified mail return receipt requested, but also it failed to show it gave the Plaintiff the full thirty days required under the statute.

ARGUENDO: If the Plaintiff could waive the formal notice requirement, it cannot be waived simply by showing up at the foreclosure sale because he received notice in the newspaper within fifteen (15) days of the foreclosure.

WHEREFORE, failure to follow the requirements of the statute is fatal for a valid foreclosure and the sale is wrongful.

**II. THERE WAS SUFFICIENT EVIDENCE FOR THE
JURY TO DETERMINE DAMAGES WITHOUT
SPECULATION OR ASSUMPTION**

The Plaintiff testified concerning the cost of items on a list provided by him and the reason why he did not have the original inventory list. The Plaintiff testified concerning the cost of each item, its value, when it was purchased, and if new or used. In any event, an owner can provide

testimony concerning the value of his property. *Hartfort Accident & Indemnity Co. v. Dikomey Manufacturing Jewelers, Inc.*, D.C. App., 409 A.2d 1076 (1979). It is the jury's responsibility to give weight to that testimony. The jury apparently did not give the Plaintiff's testimony much credit since it only awarded him \$500.00. Damages do not need to be proved with certainty. The proper and only measure of damage for the wrongful disclosure is the difference between the mortgage or the balance due on the property and the value of the property. The tax assessment pursuant to 47-820² is equal to market value.

We submit the jury had more than enough evidence of value upon which to base its award without speculation.

CONCLUSION

For the above reasons, the Appellee requests that this court affirm the decision of the trial court.

Respectfully submitted,

BERNARD A. GRAY,
SR. 955013
2009 18th Street, S.E.
Washington, D.C. 20020
(202) 889-6900
COUNSEL FOR THE
APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief was mailed postage prepaid the 2nd day of October, 1989, to attorney for the Appellant, JAMES W. COBB, ESQUIRE, 1004 6th Street, N.W., Washington, D.C. 20001.

¹See Appendix

²See Appendix

Bernard A. Gray, Sr.

District of Columbia
Court of Appeals

No. 88-1642

INDEPENDENCE FEDERAL SAVINGS BANK, APPELLANT,

v.

JAMES B. HUNTLEY, APPELLEE.

Appeal from the Superior Court of the
District of Columbia

(Hon. Ronald P. Wertheim, Trial Judge)

(Submitted February 21, 1990 Decided April 30, 1990)

James W. Cobb was on the brief for appellant.

Bernard A. Gray, Sr., was on the brief for appellee.

Before FERREN, BELSON, and FARRELL, Associate
Judges.

PER CURIAM: Plaintiff-appellee brought suit against appellant (the Bank) for wrongful foreclosure and wrongful eviction. At the close of the evidence, the trial court directed a verdict for plaintiff on liability as to both counts on the ground that the bank had failed to give proper statutory notice of proposed foreclosure under D.C. Code § 45-715 (b) (1986). A jury then returned a verdict on damages, awarding plaintiff \$30,000 for wrongful foreclosure and \$500 for loss of personal property during the wrongful eviction.

On appeal, the Bank's primary contention is that the directed verdict on liability was improper because in his deposition plaintiff conceded that he had learned of the foreclosure sale scheduled for November 26, 1986, by reading of it in the Washington Times on November 10, 1986, thereby—in the Bank's view—rendering harmless

any non-compliance on its part with the notice requirement of § 45-715 (b). We reject this argument. The trial court correctly concluded, as a matter of law, that the Bank had failed to give notice by certified mail return receipt requested, as required by § 45-715 (b). In the analogous context of tax sales, this court has held that the government "may effect a valid conveyance of property for nonpayment of real estate taxes only by 'strict compliance' with the tax sale statute and regulations." *Boddie v. Robinson*, 430 A.2d 519, 522 (D.C. 1981); *see also Robinson v. Kerwin*, 454 A.2d 1302, 1305 (D.C. 1983). Other courts have held that, under trust deed foreclosure statutes similar to § 45-715 (b), "the terms of [such] statutes must be strictly complied with, in order to satisfy the due process requirements of notice and opportunity to be heard." *Security Pac. Fin., Corp. v. Bishop*, 704 P.2d 357, 359 (Idaho Ct. App. 1985); *Patton v. First Fed. Sav. & Loan Ass'n*, 578 P.2d 152, 156 (Ariz. 1978).

The Bank cites no authority for its argument that the defect in notice "was cured by the knowledge of the borrowers of the pending sale and [plaintiff's] presence" at the sale. A key purpose of § 45-715 (b) is to insure, whenever possible, that the owner of the encumbered property has notice of the sale "at least 30 days in advance of the date of said sale." The Bank concedes that plaintiff did not learn of the sale until November 10, 1986, sixteen days before the date of sale. Although plaintiff was able to file the instant suit on November 17, 1986, that did not prevent the sale of the property from going forward; in any event, the purpose of the 30-day notice provision is to allow the owner substantially more time than plaintiff received to "cure his default" in regard to the property. D.C. Code § 45-715.1. Without deciding whether actual notice may ever excuse failure to comply strictly with § 45-715 (b), we conclude that the 16-day notice which plaintiff received was inadequate for that purpose.

We reject as well the Bank's argument that the evidence regarding damages on Huntley's claim for loss of personal property was speculative. Plaintiff's testimony about the cost of the household items to him or his estimate of their value was sufficient to create a jury issue. See *Hartford Accident and Indem. Co. v. Dikomey Mfg. Jewelers*, 409 A.2d 1076, 1079 (D.C. 1979) (owner of article, whether or not generally familiar with value of like articles, may testify as to estimate of value of own property). Contrary to the Bank's additional claim, it was not denied—and, indeed, it utilized—an opportunity to cross-examine plaintiff about inconsistent statements in his deposition. Finally, as to the Bank's unparticularized claim that the trial court failed to give instructions on abandonment, proof of damages and notice, we conclude that instructions on abandonment and notice were not required because the court had effectively taken those issues away from the jury by directing a verdict on the issue of liability, and that the instructions on damages as given were adequate.

The judgment of the Superior Court is, accordingly,

Affirmed.

District of Columbia Court of Appeals

INDEPENDENCE FEDERAL

SAVINGS BANK :

Appellant :

JAMES B. HUNTLEY :

Appellee :

Appeal No. 88-01642

PETITION FOR REHEARING OR HEARING EN BANC

JAMES W. COBB, ESQUIRE

Attorney Appellant

1004 Sixth Street, N.W.

Washington, D.C. 20001

(202) 387-1100

PETITION FOR REHEARING OR HEARING EN BANC

Comes now the Appellant, Independence Federal Savings Bank, by and through their attorney, James W. Cobb, and respectfully petitions this Honorable Court for a Rehearing or a Rehearing En Banc, and for reasons therefore, respectfully submits that the following points of law and fact have been overlooked or misapprehended:

I. The Due Process Clause Article Fourteen of the Constitution has been satisfied, when the certified letter had been mailed, as required by and supplemented by Title 45, Section 715(b) of the Code of Laws for the District of Columbia. Receipt of actual notice by the defaulting party, in this instance 16 days prior to the sale, should not be considered as occurring so close to the actual sale to late to protect an aggrieved or innocent party to a contract. The analogy to tax sale statutes and regulations that might

be applicable to governments or municipalities should not apply in the interpretation of the power of sale clause as they apply to the contract between consenting parties. This is clearly contained in the provisions of the Power of Sale within their agreement.

II. The provisions of Title 45-715(b), Code of Laws for the District of Columbia were satisfied by the Bank in the use of their agent a reputable auctioneer, whose testimony was uncontroverted, and the annexed exhibits.¹

The impact of this opinion, seriously affects the economic and legal processes in the United States, and the District of Columbia in particular, as it affects the rights between contracting parties. Moreover, this could affect proceedings that have occurred in the past as well as the present and future.

It is respectfully urged that the Court Rehear this matter as to the satisfaction of the requirements in these areas. Private Contracting Parties including Banks and auctioneers might better conduct their affairs. It may well be that the legislative process, the conduct of the auctioneers and that of Counsel be reexamined in order that the interests of justice, both legally requitably prevail. The testimony and the records of the auctioneer was available if there was a need to perfect any possible defect that may have been perceived as a technical defect. This would assure and protect a necessary system of law and order.

CONCLUSION

Upon consideration of the above arguments, the Bank prays that the Petition for Rehearing or Hearing En Banc be granted.

2. For such other and further relief as to this Honorable Court may seem just and proper.

Respectfully submitted,

JAMES W. COBB
Attorney for Appellants/
Defendants
1004 Sixth Street, N.W.
Washington, D.C. 20001
(202) 387-1100

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief for Appellant, was mailed, postage prepaid, to Bernard A. Gray, Esq., 2009-18th Street, S.E., Washington, D.C. 20020, Attorney for Appellee/Plaintiff, this 11th day of May, 1990.

JAMES W. COBB,
ESQUIRE

**NOTICE OF FORECLOSURE SALE OF REAL
PROPERTY OR CONDOMINIUM UNIT**

(Pursuant to Public Law 90-566, approved
October 12, 1968)

TO; (List Name and address of each owner of the real
property encumbered by said deed of trust, mort-
gage, or security instrument.)

Mr. James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

FROM: Independence Federal Savings Bank
PHONE: (202) 628-5500

YOU ARE HEREBY NOTIFIED THAT IN ORDER TO
SATISFY THE DEBT SECURED BY THE DEED OF
TRUST, MORTGAGE, OR OTHER SECURITY IN-
STRUMENT, THE REAL PROPERTY OR CONDO-
MINIUM UNIT HEREIN DESCRIBED WILL BE
SOLD AT A FORECLOSURE SALE TO BE HELD ON
Thurs., Nov. 20th, 1986, AT THE OFFICE OF THOS. J.
OWEN & SON, INC., 4400 JENIFER ST., N.W., STE.
300, WDC 20015 12:05 P.M. THIS SALE DATE IS SUB-
JECT TO POSTPONEMENT FOR A PERIOD NOT TO
EXCEED THIRTY (30) CALENDAR DAYS FROM
THE ORIGINAL DATE OF FORECLOSURE SALE,
AFTER WHICH THIS NOTICE OF FORECLOSURE
SHALL EXPIRE.

Security Instrument recorded in the land records of the
District of Columbia at the Recorder of Deeds on Novem-
ber 2, 1984.

Liber: Folio: Instrument No. 40093

Maker(s) of Note secured by the instrument:

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

Description of Property: Brick Semi Detached Dwelling

Address: 600 T Street, N.W., Washington, D.C. 20001

Lot & Square No: 837/441 or Parcel No:

Holder of the Note:

Independence Federal Savings Bank of Washington
1229 Connecticut Ave., N.W., Washington, D.C. 20036
628-5500

Balance owned on the note: \$39,993.51 plus interest

Minimum balance required to cure default obligation pursuant to D.C. Law 5-82 "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984." \$11,647.21 as of 10/31/86 plus costs and fees.

Person to contact to stop foreclosure sale:

Denise Cooley, Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
(202) 628-5500

I, hereby certify that a Notice of Foreclosure Sale was sent to the present owner(s) of the real property encumbered by said deed of trust, mortgage, or other security instrument described above, by certified mail, return receipt required on October 15, 1986; and I further certify that I understand that Public Law 90-566 prohibits any foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument until after the owner(s) of the real property encumbered by said deed of trust, mortgage, or security instrument has been given written notice of such sale, and the

Recorder of Deeds, D.C. has received a copy of such notice at least 30 days in advance of such sale.

October 15, 1986

/s/

(Date)

(Signature of the Noteholder or
his agent)

I, Helen Joyce Blizzard, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT C.R. Griffin, party/ies to this Notice of Foreclosure Sale bearing date on the 15th day of October, 1986, personally appeared before me and executed the said Notice of Foreclosure Sale and acknowledged the same to be his/her/their act and deed.

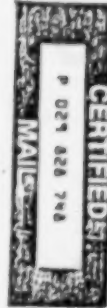
Given under my hand and seal this the 15th day of October, 1986.

Notary Public

My commission expires:
(Notarial Seal)

THOS. J. OWEN & SON, INC.

REAL ESTATE AUCTIONEERS
4000 Resister Street, N.W.
Washington, D.C. 20013



668928
SON

Sub F 200

P 029 028 748

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

To: <i>Thomas J. Owen & Son, Inc.</i>	
Address: <i>4000 Resister St. NW</i>	
City, State and ZIP Code: <i>Washington, DC 20013</i>	
Postage	<i>1.67</i>
Certified Fee	
Special Delivery Fee	
Registered Delivery Fee	
Return Receipt (Showing to whom and Date Delivered)	
Return Receipt (Showing to whom, Date, and Address of Delivery)	
TOTAL Postage and Fees	<i>1.67</i>
Reference or Data: <i>600 T. J. O. W.</i>	

PS Form 3825, Feb. 1982

MARCO CARDVILLE
RECEIVER OF DEEDS
WASHINGTON D.C.

42162 INH
6.00 FORD
6.00 TOTL
6.00 CAID
10/17/82
2149

MARCO CARDVILLE
RECEIVER OF DEEDS
WASHINGTON D.C.

42312 INH
6.00 PLND
6.00 TOTL
6.00 CAID
10/17/82
2149

**NOTICE OF FORECLOSURE SALE OF REAL
PROPERTY OR CONDOMINIUM UNIT**

(Pursuant to Public Law 90-566, approved
October 12, 1968)

TO: (List Name and address of each owner of the real
property encumbered by said deed of trust, mor-
tage, or security instrument.)

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

FROM: Independence Federal Savings Bank
PHONE: (202) 628 5500

YOU ARE HEREBY NOTIFIED THAT IN ORDER TO
SATISFY THE DEBT SECURED BY THE DEED OF
TRUST, MORTGAGE, OR OTHER SECURITY IN-
STRUMENT, THE REAL PROPERTY OR CONDO-
MINIUM UNIT HEREIN DESCRIBED WILL BE
SOLD AT A FORECLOSURE SALE TO BE HELD ON
Thursday, Nov. 20, 1986, AT THE OFFICE OF THOS. J.
OWEN & SON, INC. 4400 JENIFER STREET, N.W.
SUITE 300, WASHINGTON, D.C. AT 12:30 P.M. THIS
SALE DATE IS SUBJECT TO POSTPONEMENT FOR
A PERIOD NOT TO EXCEED THIRTY (30) CALEN-
DAR DAYS FROM THE ORIGINAL DATE OF FORE-
CLOSURE SALE, AFTER WHICH THIS NOTICE OF
FORECLOSURE SHALL EXPIRE.

Security Instrument recorded in the land records of the
District of Columbia at the Recorder of Deeds on Septem-
ber 27, 1984.

Liber: Folio: Instrument No. 35295

Maker(s) of Note secured by the instrument:

James B. Huntley & Emily C. Huntley
4395 Colorado Ave., N.W.
Washington, D.C. 20011

Description of Property: Brick Dwelling

Address: 5519 Illinois Ave., N.W., Washington, D.C. 20011

Lot & Square No: 75/2992 or Parcel No:

Holder of the Note:

Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
628-5500

Balance owed on the note: \$39,993.51 plus interest

Minimum balance required to cure default obligation pursuant to D.C. Law 5-82 "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984." \$11,647.21 as of 10/31/86 plus costs and fees.

Person to contact to stop foreclosure sale:

Denise Cooley, Independence Federal Savings Bank
1229 Connecticut Ave., N.W., Washington, D.C. 20036
(202) 628-5500

I, hereby certify that a Notice of Foreclosure Sale was sent to the present owner(s) of the real property encumbered by said deed of trust, mortgage, or other security instrument described above, by certified mail, return receipt required on October 15, 1986; and I further certify that I understand that Public Law 90-566 prohibits any foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument until after the owner(s) of the real property encumbered by said deed of trust, mortgage, or security instrument has been given written notice of such sale, and the

Recorder of Deeds, D.C. has received a copy of such notice at least 30 days in advance of such sale.

October 15, 1986

/s/

(Date)

(Signature of the Noteholder or
his agent)

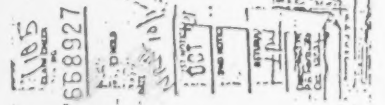
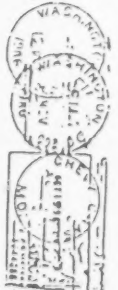
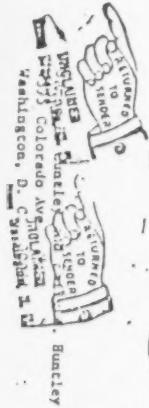
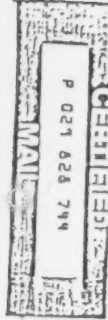
I, Helen Joyce Blizzard, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT C.R. Griffin, party/ies to this Notice of Foreclosure Sale bearing date on the 15th day of October, 1986, personally appeared before me and executed the said Notice of Foreclosure Sale and acknowledged the same to be his/her/their act and deed.

Given under my hand and seal this the 15th day of October, 1986.

Notary Public

My commission expires: 9/30/88

THOS. J. OWEN & SON, INC.
REAL ESTATE AUCTIONEERS
4400 Fenwick Street, N.W.
Washington, D.C. 20013



P 029 628 744

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Post to 5519 Glenview Ave NW Washington, D.C. 20011	
P.O. State and ZIP Code	Washington, D.C. 20011
Postage	\$ 1
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 1
Postmark or Date 5519 Glenview Ave NW 10/15	

U.S. Form 3800, Feb. 1962

HAROLD EARDONVILLE
RECORDER OF DEEDS
WASHINGTON D.C.
43300 INES
6.00 PLAC
6.00 TOTAL
6.00 CASH
10/15
1963

HAROLD EARDONVILLE
RECORDER OF DEEDS
WASHINGTON D.C.
43300 INES
6.00 PLAC
6.00 TOTAL
6.00 CASH
10/15
1963

(Name)

**Law Offices
JAMES COBB & ASSOCIATES, P.C.
1004 SIXTH STREET, N.W.
WASHINGTON, D.C. 20001**

JAMES W. COBB

TELEPHONE

(202) 387-1100

FAX

(202) 408-0741

May 11, 1990

Clerk
Court of Appeals for the
District of Columbia
Washington, D.C. 20001

RE: Independence Federal
Savings Bank
Huntley, James B.
Appeals No. 88-01642

Gentlepersons:

Pursuant to Rule 53, the validity of the following statute
is raised in this court:

Title 45, 45-715, Code of Laws for the District of
Columbia

It is respectfully requested that this fact be reported to
the Corporation Counsel for the District of Columbia.

Very truly yours,

James W. Cobb

JWC: pah

**Law Offices
JAMES COBB & ASSOCIATES, P.C.
1004 SIXTH STREET, N.W.
WASHINGTON, D.C. 20001**

JAMES W. COBB

TELEPHONE

(202) 387-1100

FAX

(202) 408-0741

May 11, 1990

**Clerk
Court of Appeals for the
District of Columbia
Washington, D.C. 20001**

**RE: Independence Federal
Savings Bank
Huntley, James B.
Appeals No. 88-01642**

Gentlepersons:

**Pursuant to Rule 5 of the District of Columbia Court of
Appeals, the following constitution question is raised in
this Court:**

Article 14, U.S. Constitution

**It is respectfully requested that this fact be reported to
the Attorney General of the United States.**

Very truly yours,

James W. Cobb

JWC: pah

**District of Columbia
Court of Appeals**

No. 88-1642 :
INDEPENDENCE FEDERAL :
SAVINGS BANK :
Appellant :

CA9500-86

vs. :
JAMES B. HUNTLEY :
Appellee :

BEFORE: Rogers, Chief Judge; **Newman, *Ferren, *Belson, Terry, Steadman, Schwelb, and *Farrell, Associate Judges.

ORDER

On consideration of appellant's petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

** Associate Judge Newman has recused himself from this case.

Copies to:	James W. Cobb, Esquire
Honorable Ronald P. Wertheim	1004 Sixth Street, N.W.
Clerk, Superior Court	Washington, D.C. 20001

Bernard A. Gray, Sr., Esquire
2009-18th Street, S.E.
Washington, D.C. 20020

